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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977.

## Nos. 76-1159 and 76-1416

ARTHUR F. QUERN, DIRECTOR OF THE ILLINOIS DEPARTMENT OF PUBLIC AID, ET AL., *Petitioners,*

*vs.*

VENUS MANDLEY, ET AL., *Respondents.*

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, *Petitioner,*

*vs.*

VENUS MANDLEY, ET AL., *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

**Motion for Leave to File Brief and Brief Amici Curiae for United Way of Metropolitan Chicago (Formerly Council for Community Services in Metropolitan Chicago), Jewish Family and Community Service, Common Pantry, Women's International League for Peace and Freedom—Chicago Branch, Jane Addams Center (a Hull House Affiliate), Operation Push (People United to Save Humanity), the American Red Cross —Mid-America Chapter, Travelers Aid Society of Metropolitan Chicago, Hull House Association, Juvenile Protection Association, Japanese American Service Committee, the Lakeview Pantry, Afro-American Family and Community Services, Lutheran Welfare Services of Illinois, South Chicago Community Services, and Cathedral Shelter of Chicago.**

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The sixteen above-named private social service agencies, which are actively engaged in the Chicago Metropolitan area in charitable social service work, respectfully move for leave to file a brief *amici curiae* in support of the respondents. The Solicitor General and the respondents consented to the filing of this brief, but the Illinois petitioners declined to do so. These *amici** previously filed briefs with the court of appeals and the district court supporting the positions of respondents and the interest of these *amici* in the case remains unchanged.

These *amici* have been seriously and adversely affected by the actions of the Illinois petitioners in denying emergency assistance to many distressed and impoverished families contrary to the decisions of the court of appeals in this case on September 25, 1975 (523 F. 2d 415) and on November 23, 1976 (545 F. 2d 1062) known as Mandley I and II. To circumvent Mandley I, the Illinois petitioners, with the support of petitioner, United States Department of Health, Education and Welfare (HEW), changed the name, but not the substance, of emergency assistance in Illinois and, on the basis of that change persuaded the district court to dismiss the case as moot. That dismissal was reversed in Mandley II, and, pursuant to its mandate, the district court entered a judgment for the respondents but has declined to enforce it pending this Court's decision. Illinois still has only a restricted emergency assistance (now termed "special assistance") program for some but not all causes of emergency, rather than a comprehensive program for all such emergency causes as required by Mandley I and II.

Eligible families under the Social Security Act who are denied emergency assistance by Illinois frequently turn to private charities for such aid, placing a heavy burden on them. The brief of the *amici curiae* will contend that, in restricting its emergency assistance program and in circumventing the mandate of the court of appeals, the Illinois respondents, with the support of HEW, have caused an illegal shift to private charities and social

* Together with one social service agency which has subsequently ceased functioning.



service agencies, such as these *amici*, of a significant portion of its responsibility under the Social Security Act for emergency assistance to needy families with children.

For the foregoing reasons, we respectfully submit that the motion for leave to file a brief *amici curiae* should be granted.

Respectfully submitted,

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**Brief Amici Curiae for**

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## INTEREST OF THE AMICI CURIAE.

The interest of these *amici curiae* is set forth in their annexed motion for leave to file this brief.

## STATEMENT OF FACTS.

The restricted Illinois emergency assistance program, which the court of appeals held to be illegal, but which Illinois petitioners continue to operate under a different name, has adversely affected the operations of private social service agencies. Many families which would have received emergency assistance prior to the fall of 1973 when the restricted Illinois program began, have been obliged to turn to private social service agencies for help. The shift of responsibility for such emergency assistance to private social service agencies has seriously burdened the limited resources of the agencies. Many of them are not normally equipped to provide food, clothing, shelter and household supplies needed to meet emergencies. The increased demand on these agencies to provide such basic subsistance for AFDC participants and other needy families has diverted the agencies' energies and resources from their normal programs of service. Such diversions may jeopardize their receipt of contributions in the future since many donations are intended for the specific purposes of these agencies. Even pantries which normally provide food have been so pressed in meeting emergency needs that they have run out of supplies and have been forced to ration their distributions.



## ARGUMENT.

### 1. Section 406(e)(1) Does Not Permit a State Receiving Payments for Emergency Assistance to Give Aid for Some Causes of Emergency But Not for Others, as Illinois Has Done.

The express language of § 406(e)(1) places no limitation upon the causes of emergency for which assistance is to be available. The stated purpose of this aid is "to avoid destitution of such child". The cause of an emergency has no bearing on the child's need when the family has suffered a sudden personal financial crisis. Therefore, it was the relief needed and not the cause of the emergency on which Congress focused.

The last three specified limitations on emergency assistance stated in § 406(e)(1) (in addition to being under the age of 21 and living with a specified relative in the latter's home) relate entirely to the child's actual and potential financial situation. These are:

(a) the "child is without available resources";

(b) "the payments • • • are necessary to avoid destitution"; and

(c) the destitution did not arise from a refusal without good cause of employment or training for employment by the child or his relative.

However, no eligibility differentiation based on the cause of the emergency is expressed in the statute, nor is there an explicit delegation of authority to HEW or the individual states to make such distinctions. It would be illogical to infer, as petitioners suggest, power in the states to impose additional arbitrary limitations on eligibility which Congress did not expressly authorize. The language of § 406(e)(1), being so specific in listing eligibility restrictions, necessarily excludes any others and impels the conclusion that the additional eligibility restrictions imposed by Illinois were illegal. *King* v. *Smith*, 392

U. S. 309 and *Townsend* v. *Swank*, 404 U. S. 282. See also *Williams* v. *Wohlgemuth*, 540 F. 2d 163 (CA 3, 1976) at 169.

It may also be noted that in specifying eligibility requirements in § 406(e)(1), Congress designated no fault of the child or his relative, other than a refusal to work or train for work, as a ground for denying emergency assistance. Thus, by a process of exclusion Congress showed its intent that the fault of a child (such as negligence) is not a restriction on eligibility. Congress knew how to limit this kind of aid, as it demonstrated with the refusal to work limitation on eligibility. This leaves the strong implication that if it had intended to permit the states to impose additional restrictions based on the cause of the emergency, it would have done so expressly. Its silence on this is eloquent.

The legislative history of § 406(e)(1) points in the same direction. Pertinent committee reports and statements of officials to Congress cited in the briefs of the parties contain no suggestion of a congressional intent that relief should be allowed for some emergencies but not others, or that HEW or the individual states should have any discretion to allow relief from emergencies resulting from some causes but not others. Instead, this legislative history shows that Congress intended that all types of emergency should be covered.

The petitioners and their supporting *amici*, New Jersey and Massachusetts, fear the added expense of granting emergency assistance unrestricted by the states. However, any state, such as Illinois, which may be unable or unwilling to pay its one-half share of the cost has three financial safety valves: the state may drop *all* federally funded emergency assistance; or, it may reduce *all* emergency assistance to *all* victims to the level desired; or, it may adopt a purely state financed plan. Otherwise, under the principle of *Townsend* v. *Swank*, 404 U. S. 282, it must furnish emergency aid to all victims equally, subject only to the express limitations stated in § 406(e)(1). If Illinois



wishes to accept social security benefits it must do so on the terms Congress has specified as to eligibility. It may not favor some federally eligible victims at the expense of others. As Mr. Justice Cardozo, speaking for this Court, said in *Helvering* v. *Davis*, 301 U. S. 619, at p. 645:

> "When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield. Constitution, Art. VI, Par. 2."

**2. Illinois Cannot Ignore the Broad Eligibility Requirements Established By Congress for Emergency Assistance By Changing the Name of Its Program to "Special Assistance".**

If this Court agrees that Illinois cannot maintain an emergency assistance program eliminating aid to persons meeting the eligibility requirements of § 406(e)(1), then it follows that a change of name to "special assistance" does not make this program more palatable. HEW admits (br., p. 6) that the new Illinois eligibility restrictions and coverage limitations are "essentially identical to those of the terminated EA program". The Illinois petitioners state (br., p. 8) that their new "special assistance" program affords "virtually identical relief as was provided under the § 406(e) program." Thus, there is complete agreement by the parties that after Mandley I the Illinois petitioners, with HEW's blessing, sought to sidestep that decision by this change of name.

The novel argument for dual statutory authority for emergency assistance, made by both the federal and Illinois petitioners, *i.e.*, that such aid is authorized under *either* the emergency assistance provisions of § 406(e)(1) and funded under § 403(a)(5) *or* the AFDC "special needs" regulation purportedly funded under § 403(a)(1), appears to be an afterthought. Nowhere in petitioners' briefs is it asserted that this concept was ever before expressed by HEW in its regulations or in any other public statement or brief. Nor are we aware of any such contention previously made by Illinois.

The AFDC "special needs" regulation has been used in various state programs approved by HEW to cover unusual expenditures, which ordinarily do not involve any emergency. Typical special circumstance items in numerous state plans are: special diets; allowance for pregnancy, medical expense, prosthetic devices, telephone installation, school expenses, travel costs for health care, guardianship fees, medical insurance, TB sanitarium expenses.

The HEW 1974 edition of "Characteristics of State Plans for Aid to Families with Dependent Children Under the Social Security Act, Title IV-A" lists only five states, California (p. 19), Hawaii (p. 50), North Dakota (p. 147), Rhode Island (p. 171) and Wisconsin (p. 215), supplying assistance under the heading "special circumstances items" which include any listed expenses of an emergency nature. Such emergency items appear incidental to other special items rather than parts of a comprehensive emergency assistance program. No other states so listed by HEW as providing "special circumstance items" include any items of an emergency character.

HEW concedes (br. p. 16) that it has never defined "special need items". Also, it tacitly admits that it never expressly claimed that such items could properly include "emergency assistance" when it asserts (br. p. 16) that "it has been well understood that the term includes benefit payments designed to meet emergency needs." HEW does not state who had such an understanding and there is nothing in the record to explain this statement. At most it must have been an administrative secret.

HEW's quoted statement (br. p. 16) from the Handbook of Public Assistance Administration, Part IV, § 3131(3) dated July 6, 1966 and the section in which it appears make no mention of "emergency assistance". Instead "emergency situations", and "federal participation" in payments to meet them, are covered in another section of the Handbook, Part IV, § 3434.2 dated December 10, 1962, long prior to the 1968 "emergency assistance" amendments to the Social Security Act



now found in § 406(e)(1). The "emergency situations" mentioned in § 3434.2 are not described in § 3131.3 as categories of "special needs". Instead, they stand on their own feet as "emergency" payments and were superseded necessarily by the subsequent provisions of § 406(e)(1) giving congressional directions for the first time as to emergency assistance. The statute takes precedence over the prior administrative directions, particularly as to the new broad eligibility standards of § 406(e)(1). Neither Handbook section suggests that the broad eligibility provisions of § 406(e)(1) can be avoided by listing emergency assistance under "special needs". Illinois is the first state, so far as we know, to attempt to transfer an identical restricted program from the emergency assistance provisions of § 406(e)(1) to a "special needs" provision of its regular AFDC program, whether to evade the broad eligibility provisions of § 406(e)(1) or for any other purpose.

Petitioners claim that the adoption of the emergency assistance amendments by Congress did not repeal the authorization for "special need" allowances under the regular AFDC programs. Yet it seems evident that Congress intended that all emergency assistance programs, however designated, should be provided solely under the eligibility requirements of § 406(e)(1). Thus, the Illinois emergency assistance program held illegal in Mandley I cannot be justified by simply relabeling it as "special needs". Even though renamed the program is for emergency assistance and therefore must necessarily be controlled by § 406(e)(1) as to eligibility. If the Illinois program was illegal as held in Mandley I, then it remained equally illegal under the new "special needs" heading. There could be no more apt place for the use of the equitable precept that equity looks through form to substance.

### 3. The Relief Granted by the Court of Appeals Is Appropriate and, if Compliance with the Court's Interpretation of § 406(e)(1) Is to Be Achieved, It Was Necessary.

HEW complains (br. 35-6) that the relief granted by the court of appeals was too broad in that it applies nationwide by requiring HEW "to promulgate regulations in accordance with the court of appeals' opinions" even though respondents could be protected by "statewide relief". It does not explain how such a segregation of relief could be accomplished. Obviously some new HEW regulation must be issued to attain compliance with Mandley I and II, if this Court decides to affirm the latter. The court's interpretation of the statute is not self executing. Even now HEW does not propose willing compliance, should this Court approve this interpretation. Indeed it suggests the opposite by asking that respondents be limited to relief solely within Illinois, apparently to leave HEW free to follow a contrary interpretation in all other states. Whatever the proper construction of the statute may be, it should be applied equally in all states, and HEW and the individual states with emergency assistance programs should give all persons the same benefits of the statute.

HEW urges (br. 37) that national application of the statute, as held in Mandley I and II, would force states paying emergency assistance benefits to either enlarge their benefit programs or terminate them. This choice is conferred by Congress, but there is no evidence in the record to support the likelihood of a widespread withdrawal from emergency assistance by the states now providing it. Illinois, for one, has so far refused to abandon it, resorting instead to attempted statutory manipulation. We understand that the total cost of emergency assistance in Illinois before it was illegally reduced in 1973 had been only about $2,500,000 a year of which one-half was funded by HEW—a tiny percentage of the state's total welfare expense.

The courts having the responsibility for construction of the Social Security Act must require compliance with their interpretation on an equal basis throughout the nation. In the light of Illinois' and HEW's attempt to circumvent Mandley the relief granted in Mandley II seems minimal to achieve compliance by them with the courts' decisions.



### 4. There Was No Intent by Congress to Permit States to Transfer Part of Their Responsibility for Emergency Assistance to Charities and Social Service Agencies.

Illinois, in denying aid to emergency victims through improper restrictions on eligibility, knows that charities and social agencies, like these *amici*, are strongly impelled to aid them because of their helplessness, even at the expense of their own normal social and charitable functions. Often Illinois public aid offices, unable to help them under state programs, send victims of emergencies to private agencies for aid. These charities may then be obliged to choose between aiding them through diverting their own funds and personnel from their established purposes or turning away these helpless persons.

The congressional hearings, debates and reports on the emergency assistance program do not contain any language which indicates that private charity was to assist the state and federal governments in providing emergency assistance after a state had decided to participate in the emergency assistance program. Instead, the legislative history of the emergency assistance program indicates that once a state makes the determination to participate in the emergency assistance program, it must provide assistance to all persons eligible under § 406(e)(1).

Likewise, the Illinois Public Aid Code contains no language expressly or impliedly shifting any part of the burden for emergency assistance to private persons or charitable agencies. See Ill. Rev. Stats. (1975) Chap. 23, § 1-1 *et seq.* and, particularly as to emergency assistance, § 12-8. Both the federal and Illinois lawmakers intended that only the state (aided with federal money) and not private charities would provide emergency assistance.

The impact on private eleemosynary organizations of welfare regulations in determining the legality of the regulations is a proper concern of the courts. *Memorial Hospital* v. *Maricopa County*, 415 U. S. 250, 264 (1974). See also *Adens* v. *Sailer*, 312 F. Supp. 923, 925 (E. D. Pa., 1970). In both cases the welfare regulations complained of were struck down. They strongly suggest that petitioners' attempt to shift the burden of emergency assistance to private agencies, and the poor themselves, violates both federal and state welfare policy.

Both Congress and the courts have found that a major purpose of the Social Security Act is to provide for the security of dependent children. *King* v. *Smith*, 392 U. S. 309 (1968). In only providing for a limited number of emergency situations, the Illinois petitioners violate the welfare policy embodied in the Social Security Act that the federal and state governments should provide for basic and emergency needs of the poor. Moreover, the Illinois petitioners in directing those in need to request assistance from private social agencies, such as the *amici curiae*, for emergencies not compensated by the Illinois emergency assistance program, place an undue burden on those organizations.

Evidence was adduced at the trial on the adverse impact of Illinois' restricted emergency assistance program. Witnesses testified that their organizations had experienced increased requests for aid from indigent persons since the implementation of the restricted program. The inability of the private social service agencies to provide for the emergency needs of needy families and their children was also shown by testimony during the trial. Private agencies are not equipped with the financial resources to meet the demands of all those persons in need who are forced by the Illinois petitioners to seek relief from such agencies since the limited financial resources of the agencies are largely required for other social purposes, such as day care centers, family therapy, legal aid, child counseling, job training programs and education courses. The restricted emergency



assistance program continues to put pressure on the social service agencies to divert resources for emergency needs and consequent disruption of their regular programs.

## CONCLUSION.

The decision of the court of appeals should be affirmed.

Respectfully submitted,

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